

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KENNETH MANNING,

Plaintiff,

vs.

CHARLIE RATCLIFF, *et al.*,

Defendants.

2:13-cv-01553-GMN-VCF

ORDER

Plaintiff is a prisoner proceeding *pro se*. Plaintiff has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 as well as an application to proceed *in forma pauperis*. (ECF No. 1). However, on at least three occasions, the court has dismissed civil actions commenced by plaintiff while in detention for failure to state a claim for which relief may be granted.¹ Under 28 U.S.C. § 1915(g), “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that is frivolous, malicious, or fails to state a claim upon which relief may be granted,” he may not proceed *in forma pauperis* and instead must pay the full \$350.00 filing fee in advance, unless he is under imminent danger of serious physical injury.

Plaintiff cannot proceed *in forma pauperis* in this action because he has had three or more prior actions dismissed for failure to state a claim upon which relief may be granted. Moreover, in the instant complaint, plaintiff fails to plausibly allege that he is in imminent danger of serious physical injury. *See Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007) (holding that the exception to § 1915(g) applies “if the complaint makes a plausible allegation that the prisoner faced

¹ *Manning v. Baca*, 3:06-cv-00422-LRH-VPC (listing cases dismissed for failure to state a claim, including *Manning v. Clifton*, 3:03-cv-00183-ECR-RAM; *Manning v. NDOC*, 3:04-cv-00025-LRH-VPC; *Manning v. McDaniel*, 3:04-cv-00688-LRH-RAM; *Manning v. Reed*, 3:04-cv-00701-HDM-RAM; *Manning v. Reed*, 3:05-cv-00196-PMP-RAM). The court takes judicial notice of its prior records in the above matters.

1 'imminent danger of serious physical injury' at the time of filing."). Plaintiff must pre-pay the filing
2 fee in full.

3 **IT IS THEREFORE ORDERED** that plaintiff's application to proceed *in forma pauperis*
4 (ECF No. 1) is **DENIED**.

5 **IT IS FURTHER ORDERED** that this action will be dismissed without prejudice unless
6 plaintiff pays the \$350.00 filing fee in full within **thirty (30) days** of entry of this order.

7 **IT IS FURTHER ORDERED** that the Clerk of Court shall send plaintiff two copies of this
8 order. Plaintiff shall make the necessary arrangements to have one copy of this order attached to the
9 check paying the \$350.00 filing fee.

10 **IT IS FURTHER ORDERED** that the Clerk of the Court shall retain the complaint.

11 Dated this 10th day of October, 2013.

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15 Gloria M. Navarro
16 United States District Judge
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